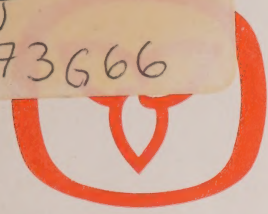


CA20N

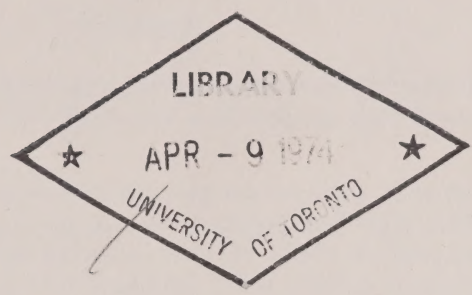
J  
73666




Government  
Publications

Ontario . Dept of Justice  
= General publications  
[G-4]

Provincial Secretary for Justice



# GREEN PAPER ON SUNDAY AS A COMMON DAY OF REST & UNIFORM STORE HOURS



Digitized by the Internet Archive  
in 2024 with funding from  
University of Toronto

<https://archive.org/details/39200920070043>

## PREFACE

The Government of Ontario has been considering proposals for legislation dealing with Sunday as a common day of rest and with uniform store hours across the province.

A substantial number of proposals and recommendations have been received – some in favour of new legislation and some against. But wider public response remains a prerequisite for the government in its efforts to determine whether it should formulate legislation for submission to the Ontario Legislature.

This Green Paper outlines the policy alternatives the government is considering. It is intended to provide an opportunity for interested individuals and groups to consider the matter and, if they wish, to respond.

The Green Paper outlines issues and options. It is a brief survey of the questions involved and the possible courses of action.

A more comprehensive and detailed document on the subject is available on request from the Provincial Secretary for Justice.

The Secretariat welcomes representations from across the province. Comments should be directed to the Provincial Secretary for Justice, Legislative Building, Queen's Park, Toronto.

Honourable George A. Kerr, Q.C.,  
Provincial Secretary for Justice  
December, 1973





## CONTENTS

### PREFACE

	Page
SUNDAY – WORK OR A COMMON DAY OF REST? .....	5
The Main Issues .....	5
Background to Sunday Observance Legislation .....	5
An “Open” Sunday – Possible Economic and Social Effects .....	6
Sunday Employment Patterns Today .....	6
The Attitudes of Trade Unions .....	7
Economic Considerations .....	7
Other Considerations .....	8
The Available Options .....	8-13
UNIFORM STORE HOURS .....	14
The Main Issues .....	14
Current Ontario Legislation Affecting Store Hours .....	14
The Pros and Cons .....	15
The Available Options .....	18
CONCLUSION .....	20



## **SUNDAY – WORK OR A COMMON DAY OF REST?**

### **THE MAIN ISSUES**

There have been major changes in social attitudes and needs since Sunday observance laws were introduced early in this century. In Ontario today, some Sunday retailing – including that of non-necessity items, if sold by certain retailers – is permitted. The Attorney General may, at his discretion, prosecute when Sunday laws are broken. Lately, more and more stores have been staying open on Sunday and small fines apparently have not deterred them. Consequently, the Attorney General carries a heavy burden because his Ministry has to decide in each case whether or not to prosecute.

A great many people are concerned that growing commercial activity on Sunday will lead to involuntary Sunday employment for many employees and erode Sunday as a traditional day of rest.

There are those on the other hand who argue that many people need or prefer to work on Sunday and that Sunday commercial activity should be left relatively free to develop in accordance with consumer demand.

The Ontario Legislature has the power to pass new legislation pertaining to Sunday commercial activity as long as it is intended to achieve secular and not religious purposes.

The government's desire is to resolve this matter in the best interests of all the province's citizens. This Green Paper is intended to provide a basis for discussion.

The main issues involved are:

- Is the principle of a common pause day consistent with trends in social attitudes and behaviour?
- Do the people of Ontario wish to reflect, in legislation, the growing secularization of Sunday?
- Do the people of Ontario wish to support a common day of rest and, if so, should this be Sunday?
- If legislation is changed, which classes of retail outlets will be permitted to open and what items will be sold?
- Are the potential social benefits of regulation likely to outweigh the potential disadvantages?
- How should our laws assist people who wish – and need – to work on Sundays?
- Should province-wide legislation treat all localities the same with respect to Sunday opening?
- How should the government administer and enforce this legislation?

### **Background to Sunday Observance Legislation**

Current federal legislation concerning Sunday observance is The Lord's Day (Canada) Act which has two main categories of prohibitions: those for business and employment activities; and those for commercial sports and entertainment.

The Act makes it unlawful to sell or purchase any goods or real estate on Sunday; carry on any business of a person's ordinary calling, or in connection with such calling; to do work, business or labour for gain or to employ anyone else for this purpose; to

provide any performances or public meetings for a price; to engage in or be present at these performances for price or for gain.

Federal legislation provides for enactment of provincial laws varying Sunday regulations and enforcement is up to provincial attorneys-general. Fines can range from \$1 to \$40 for individuals, \$20 to \$100 for employers, and \$50 to \$250 for corporations.

The Lord's Day (Ontario) Act allows municipalities to pass bylaws permitting public games or sports, exhibitions and moving pictures or theatrical performances, horse races and exhibitions, fairs and trade shows, as long as they begin after 1:30 p.m. on Sunday. Non-profit performances such as concerts and recitals are permitted by provincial law and do not require municipal approval.

Ontario's One Day's Rest in Seven Act regulates hotel, restaurant or cafe employers in larger communities; the Game and Fish Act prohibits hunting on Sundays in much of the province; the Pawnbrokers Act prohibits pawnbrokers from working on Sunday; the Municipal Act authorizes municipalities to pass bylaws providing for the closing of shops for a weekly holiday; the Liquor Licence Act controls the hours and conditions for sale and service of liquor on Sunday; the Judicature Act, the County Courts Act, and the Surrogate Courts Act prohibit most legal processes on Sundays. Finally, the Industrial Standards Act limits work which can be done in many trades on Sundays.

Every province has Sunday observance laws, most of them provincial rather than municipal. They range from prohibiting dog racing and the operation of billiard parlors on Sunday to allowing pulp and paper firms to operate on Sunday under certain conditions.

In 1969, at the request of the Minister of Justice and the Attorney General, the Ontario Law Reform Commission began to study Sunday legislation. It examined the sociological and jurisdictional issues and held hearings to assess public opinion from the many divergent elements of Ontario society.

In February, 1971, the report of the Commission suggested that Ontario should provide legislative support for a uniform weekly day of rest on Sunday for as many people as possible and that this legislation be secular in nature. Basically, it recommended laws restricting business activity on Sundays.

Since the study, a number of organizations and individuals have expressed their viewpoints on Sunday shopping to the government in briefs and letters. These range from strong support for a more restricted Sunday to suggestions that current practices be continued. Only a few advocated the expansion of Sunday retailing. The principal arguments of those opposing Sunday retailing are that it has a negative effect on home life; that it interferes with religious worship; and that consumer costs would increase.

A survey of 1,500 people, widely distributed throughout the province, showed that 89 per cent wanted drug stores open on Sunday; 34 per cent, grocery stores; 11 per cent, department stores; and 4 per cent, clothing stores.

## **An "Open" Sunday – Possible Economic and Social Effects**

### **Sunday Employment Patterns Today**

One out of eight persons employed in Ontario usually works on Sunday – of these there are about 31.2 per cent in agriculture; 27.5 per cent in community, business and personal services; and 20.1 per cent in transportation, communications and utilities. The proportion engaged in agriculture is decreasing rapidly but there's no reason to believe that this decrease will take place in the other two classifications.



The number of people engaged in production, manufacturing and construction on Sunday is decreasing, but it is possible that the high capital cost of automated factories will force more Sunday work with correspondingly less observance of Sunday as a province-wide day of rest.

A move to Sunday openings by large retail firms would directly affect the employment patterns of a great many people in Ontario.

### **The Attitudes of Trade Unions**

Trade union spokesmen have said they will look after the regulation of Sunday employment by a system of premium rates; guaranteeing alternative days off through the week; part/full-time employment ratios, and related matters.

The Ontario Law Reform Commission examined this question. Approximately one out of four persons employed in Ontario was a member of a trade union in 1969. However, over half of all union members were in the manufacturing sector, where Sunday employment is low. Wholesale and retail trade accounted for only 2.1 per cent of union membership; service industries, 8.2 per cent; and transportation and utilities, another 14.8 per cent.

The wholesale and retail trade accounted for 16.1 per cent of the total employed labour force as compared with only 2.1 per cent of the trade union membership. Community business and personal services accounted for 7.6 per cent of the total employed labour force compared with 14.8 per cent of trade union membership. These statistics show that union membership is low in areas where there is likely to be high Sunday employment.

Union representatives have frequently stated that their members would prefer to have Sunday off rather than work at double time rates. Fear has been expressed that retail employees would have little or no choice regarding Sunday work if legislation were to permit wide-open Sundays. The only protection would be provided under the Employment Standards Act for hours worked in excess of 48 per week, and, for hotel and restaurant employees, under the One Day's Rest in Seven Act.

Union opposition to Sunday store openings is largely based on the sociological changes – rather than economic issues – which would occur in family life and recreational habits of employees who had to work on Sunday. The ability to hire top-quality staff willing to work on Sundays has been questioned. Many managers believe that staff could be obtained but doubt that many of them would be of the calibre required. The low-skilled, part-time help who would work on Sundays have low bargaining power, would be reluctant to refuse work, and thus would be subject to subtle pressures.

The degree of trade union membership in any industry is important in determining the extent to which employees will receive premium rate benefits and full-time/part-time ratio protection. Industries which have a high degree of Sunday work are less likely to accept premium rates and fixed ratios for Sunday work, notwithstanding the degree of union membership.

Any move toward an open commercial Sunday would leave retail employees vulnerable to employer exploitation, unions say, because of a low degree of unionization, general lack of job mobility, and the resulting potential for employers to coerce people into working routinely on Sunday.

### **Economic Considerations**

The removal of Sunday restrictions does not mean that all stores would open. Any such decision by retailers would be based not only on economic considerations but also on

such factors as employee satisfaction and managerial preferences. Based on economics alone, Sunday opening would depend on: level of service; turnover; gross margin; and, the ratio of variable costs to fixed costs.

If a store is open on Sunday, where would a shop owner compensate for any increased costs? He could increase the week's volume; increase prices; decrease profits; or, increase efficiency.

### Other Considerations

The Ontario Law Reform Commission report suggests that recent trends will lead to Sunday selling in supermarkets, discount houses, and automotive and accessory stores, unless, of course, they are prevented from doing so by law.

More and more Ontario residents are willing to shop on Sundays. Factors which influence this trend include the opportunity for an entire family to shop together.

The concept of the staggered work week, where people work on different days, relates to Sunday openings. Advocates suggest that a staggered work week would increase productivity by permitting seven-day-a-week operations; relieve weekend traffic congestion; distribute the use of recreational facilities throughout the week.

However, this concept is still largely at a theoretical stage and still presents a degree of organizational sorting out. One example: how would children of school age be placed on the same schedule as their parents? Many communities across the province may not be ready to accept fully a staggered work week.

Increased self-service shopping has reduced costs for many retailers. Modern packaging and brand name promotion has reduced the dependence of the consumer on actual stores. Much of their trust is placed in the brand name.

Scrambled merchandising – selling products in a store normally not found in that type of store, such as hardware items in a drugstore or cosmetic items in a supermarket – poses problems for enforcement of current Sunday observation legislation.

Many people argue that retailers should remain open on Sunday for public convenience. However, the reduction in the length of the work week over the past few decades suggests that the majority of people have more time to shop than ever before.

It should be noted that any increase in public convenience is, to some extent, gained at the expense of those employed in the retail industry.

### The Available Options

There appear to be four basic options with regard to legislation concerning Sunday observance and retailing on Sunday.

**OPTION ONE:** To implement the proposals of the Ontario Law Reform Commission, which would mean a more restricted Sunday.

Its proposals include:

1. Ontario should provide legislative support for a uniform weekly day of rest on Sunday for as many people as possible.
2. This legislation should be secular, not religious.
3. The legislation should preserve a pleasant environment for the pursuit of leisure activities, while ensuring that as many persons as possible will be protected from working on Sundays against their will.



4. The title should be "The Sunday Leisure Act", reflecting its secular purpose. Alternative titles could be "The Sunday Act" or "The Sunday Rest and Recreation Act".
5. All forms of selling and employment on Sunday should be prohibited except in certain clearly defined situations. These situations should be based on how essential they are, that is, is their nature: humanitarian; an emergency; perishable; seasonal; recreational; familial; a convenience; or technical.
6. Scrambled merchandising on Sundays should be regulated.
7. Where essential Sunday selling is permitted it should be regulated according to: maximum number of employees; maximum store size; product or trade designations; maximum assessed value of premises or inventory; limited hours on Sunday; location restriction based on area and population density; rotational system among competitors; time of year; type of management; other physical limitations; licensing.
8. Ten classifications of establishments should be permitted to engage in essential selling on Sundays. They are:
  - a) **Gasoline Stations**, on a rotational basis in each community, with limitations on volume.
  - b) **Drugstores**, on a rotational basis and open six hours during the day.
  - c) **Restaurants**, with a strict trade definition.
  - d) **Variety, Convenience and Jug Milk Stores**, with a maximum of three employees for the entire day, maximum size of 2,000 square feet, and six hours' operation on Sunday.
  - e) **Tobacco Shops and Newsstands**, limited to six hours' operation, with exceptions made for newsstands in hotels and motels.
  - f) **Confectionery and Candy Stores**, limited by a strict definition.
  - g) **Nurseries**, limited by time of year.
  - h) **Fresh Fruit and Vegetable Stands**, limited by time of year.
  - i) **Souvenir and Novelty Shops**, limited by a strict trade definition, assessment of tourist demand, and a maximum of six hours of operation.
  - j) **Antique Markets**, limited to 12 Sundays of their own choosing each year.
9. The provincial licensing body should be appointed by the Lieutenant Governor in Council. It should adhere strictly to the definitions in the legislation.
10. Business which should be permitted to operate on Sunday include:

hotels, motels and other lodging facilities; essential maintenance and domestic services; real estate agents; laundromats and other coin-operated establishments; transportation services; power, water and heating services; communication services; services to protect persons and property; services and salary to classes of stores or establishments permitted to operate on Sunday; services permitted under Section II of The Lord's Day (Canada) Act ("Works of Necessity and Mercy"); services which are recreational, entertainment or cultural in nature; manufacturing, production, and construction services which operate continuously as a matter of technical or economical necessity.
11. Recreational, entertainment and cultural facilities should be permitted to operate on Sundays, subject only to municipal regulation.
12. Any municipal bylaw regulating Sunday activities should be based on secular, not religious, reasoning.
13. Where regional municipal governments exist, they, rather than individual municipalities, should regulate these activities.

14. Industries that should be permitted to operate on Sundays include:  
mining, concentrating and smelting; petroleum refining; primary steel production; pulp and paper production; chemical refining and production; commercial fishing; necessary agricultural activities; other industries as designated by the Lieutenant Governor in Council for reasons of technical or economic necessity.
15. In tourist areas, the provincial licensing body should be empowered to grant additional exemptions.
16. Tourist area exemptions should be granted upon application by one or more stores or business establishments within a class and should specify the class and the time of year. This should not be restricted to sub-areas within a tourist area nor to specific stores or business establishments, nor should it be restricted to the time of day. These exemptions should be made, taking into account the views of all other stores or businesses in the class under review; the view of the regional township and municipal councils; the recreational, entertainment and cultural needs of the tourist in the area; the views of employees in the businesses concerned. The Licensing Body should also advertise its intention of making a tourist area exemption order before doing so, and should consider any written objections.  
Prosecutions for violations should be based on the same reasoning as any other provincial legislation creating offences for violations, rather than requiring the consent of the Attorney General or his deputy.
17. Maximum fines should be \$100 for individuals and \$1,000 for corporations on first offence; \$250 for individuals and \$2,500 for corporations on second and subsequent offences.

### **Advantages of Option One**

- It introduces secular legislation which allows the province to exercise its powers under property and civil rights provisions of the British North America Act.
- It responds to the changing needs and expectations of Ontario society.
- It would stop abuses under the present Lord's Day legislation.
- It ensures greater uniformity throughout the province and prevents inter-municipal competition for Sunday retail business.
- It provides advantages for some people by permitting family and friends to gather together on at least one day of the week.
- Small store owners could remain closed on Sunday without fear of larger stores opening.
- It regulates retail competition on Sunday. At present, there is a distinct advantage vested in a retailer who remains open while others are closed.
- It removes the discretionary powers conferred on the Attorney General by The Lord's Day (Canada) Act.
- It emphasizes values in addition to those of consumerism.

### **Disadvantages of Option One**

- Less direct involvement by municipalities.
- The constitutional validity of such an act might be questioned.
- Less flexibility in a time of rapid social change.
- Less recognition of different viewpoints by different municipalities.
- A special administrative body is needed and this would require funds.



- It could be difficult to enforce.
- The Act goes against trends in consumer shopping habits.
- The designation of tourist areas where Sunday retailing is permitted could be discriminatory against some municipalities in favour of others.
- It would interfere with the movement of trade.
- It reduces the amount of part-time work or overtime available.
- The public may not want further regulation by government.
- A common day of rest will strain recreational facilities and transportation links to these facilities.

**OPTION TWO: To up-date existing laws to recognize current practices, while at the same time ensuring that flagrant abuses are avoided.**

This option includes a lesser degree of regulation than Option One. It would mean:

1. Establish a new provincial statute regarding Sunday selling.
2. Separate this Act from The Lord's Day (Canada) Act.
3. Prohibit all forms of selling on Sunday except for those relating to certain criteria: humanitarian (for health and medicine); emergency (fuses, lightbulbs, fuel oil); perishability (milk and bread); seasonal (fresh domestic fruit and nursery stock); recreational (broad interpretation including souvenirs and newspapers); familial (inspecting a house or cottage for purchase); convenience (items required to avoid considerable inconvenience); technical (gasoline).
4. The excepted services should be regulated as to: maximum number of staff; maximum square footage; product or trade designation; hours of operation; physical limitations; licensing.
5. Stores and retail establishments to be permitted should include: gasoline stations; drugstores; restaurants; convenience and jug milk stores; variety shops and newsstands; nurseries (trees, etc.); fresh fruit and vegetable stands; souvenir shops; antique markets.
6. Other services permitted, with less stringent regulations, should include: hotels and similar lodging facilities; essential maintenance and domestic services; real estate agents; coin-operated service establishments; transportation and public utilities; protective services; services auxiliary to accepted selling services; services exempted under Section II of The Lord's Day (Canada) Act; manufacturing, production and construction services that must operate continuously.
7. Employment on Sunday should be dealt with as presently permitted, whether by labour legislation or agreement.
8. A provincial licensing body should be established to permit exemptions in special areas from the restrictions in the Act, subject to prior approval by the local or regional municipality.
9. The Act should be established so that breaches can be prosecuted without the consent of the Attorney General, but with the Attorney General still having discretion relating to charges made under The Lord's Day (Canada) Act.
10. Enforcement should be carried out by law enforcement agencies without any special inspection services being required.

11. The recommendations for administrative procedure made by the Ontario Law Reform Commission should be simplified or eliminated, notwithstanding some sacrifice on the flexibility and tailoring that these procedures provide.
12. The legislation should be framed as secular regulation of trade within the province, and not as Sunday observance legislation, in order to avoid relationship with federal criminal law.
13. It might be advisable to permit the Lieutenant Governor in Council to designate a statutory holiday to which this new Act would apply so as to restrict trade.

### **Advantages of Option Two**

Advantages are similar to those of Option One with additions:

- It increases participation of local and regional municipalities.
- It simplifies the administrative procedures.

### **Disadvantages of Option Two**

Disadvantages are similar to those of Option One with the addition of:

- The simplification or elimination of the administrative procedures sacrifices some of the precision and certainty provided by those more detailed procedures.

**OPTION THREE:** To proceed under the umbrella of The Lord's Day (Canada) Act, discouraging Sunday work indirectly by extending existing labour legislation, and empowering municipalities to enact bylaws to control Sunday retail hours.

The option would mean:

1. Retention of The Lord's Day (Canada) Act as a focal point.
2. Protection for employees from involuntary Sunday employment by an extension of the Employment Standards Act.
  - This would legislate premium rates for Sunday work in specified industries.
  - This would make it illegal for employers to make Sunday work a condition of employment.
  - These provisions would be inapplicable to certain industries and to part-time or casual employees.
3. Amendment of the One Day's Rest in Seven Act to:
  - Extend it to employees in industries where the problem of involuntary Sunday employment is considered most urgent.
  - Make it compulsory for employers in the specific industries to grant regular employees, at their request, freedom from Sunday employment.
4. It permits the question of Sunday business to be settled at the municipal level by bylaw, with the Attorney General exercising further control under The Lord's Day (Canada) Act.

### **Advantages of Option Three**

- It retains The Lord's Day (Canada) Act as a focal point.
- It has considerable flexibility since the federal act does not rigorously define the classes of enterprise eligible for exemption.

- It would be relatively inexpensive to administer.
- The Acts relating to this option are familiar to the public.
- It permits more local participation.
- This option is constitutionally valid.
- This option does not interfere with trends in consumer shopping habits.

### **Disadvantages of Option Three**

- It does not reflect the secular nature of Sunday because it is based on a religion-oriented federal law.
- The Attorney General continues to have discretionary powers in prosecutions.
- It does not provide a coordinated approach to stop existing and potential abuses.
- Municipalities could compete among each other for retail trade, since there is no uniform regulation.

### **OPTION FOUR: Programs to liberalize present Sunday shopping laws.**

A variety of factors can be considered in liberalizing the present Sunday shopping laws. They would mean:

1. Altering existing laws to make legal what is now taking place.
2. Allowing municipalities complete freedom in establishing Sunday retailing in their own area.
3. Removing government restrictions on Sunday retailing, allowing consumer demand and business decisions on the part of retailers to govern their actions.

On the basis of representations and studies to date, it appears that most residents of the province would be in favour of more restricted Sunday shopping rather than a “wide open” Sunday.

## UNIFORM STORE HOURS

### THE MAIN ISSUES

Some retailers have pressed the Government of Ontario to introduce legislation to establish uniform shopping hours in retail operations across the province. Their argument is that such legislation is necessary to prevent an escalation in the length of time stores must remain open and to prevent unnecessary pressure on small and medium-sized retail merchants in downtown areas who remain open only one or two nights a week and, therefore, find it difficult to compete with large suburban plazas which are open five or six nights a week. Others argue that such legislation restricting store hours would cause inconvenience to the consumer and interfere with the normal flow of trade.

The arguments over legislation concerning uniform store hours also raise these questions:

- What stores should be exempted from a general prohibition?
- Would such legislation reflect adequately the diversity and varying needs of communities within the province?
- Should local municipalities continue to establish store hours?
- Should regional and metropolitan municipalities be empowered to determine store hours within their boundaries?
- Would it effectively protect the small independent retailer from the competition of chain stores and mass merchandisers?
- Would it cause unwarranted inconvenience to the consumer?
- Do longer store hours result in higher costs to the consumer?
- Do unregulated store hours have undesirable effects on family life by reducing the time that retail employees can spend with their families?
- Would restriction of store hours limit the volume and range of employment opportunities available in the community?
- Would there be adverse economic effects resulting from uniform store hours legislation?
- Would the public accept the higher level of enforcement that would be necessary for more regulation?

### Current Ontario Legislation Affecting Store Hours

Two Acts currently affect the closing hours of retail establishments. The Employment Standards Act requires time-and-a-half rates to be paid for all work performed on a "holiday" or in excess of 48 hours per week. Thus, a retailing employer located in a community where no bylaws restrict opening hours can remain open as he chooses provided he complies with the Act.

The Municipal Act gives municipalities power to regulate store hours through bylaws and also empowers the council of a city, town or village to require shops to close for weekly holidays and half-holidays.

The Ontario Ministry of Labour recently undertook a survey of the bylaws in the 38 largest urban municipalities to determine the extent to which the permissive regulatory authority is used. It was found that 18 of these municipalities have no uniform store-hours bylaws; 12 have bylaws which apply only to particular categories of stores; and the remaining seven have general bylaws with only limited exemptions.



The question of uniform store hours has been a matter of considerable debate in many communities and, generally, the trend has been away from municipal regulation. The possible reasons: recognition by municipal councils of the benefits of evening shopping hours for the customer; ineffectiveness of existing bylaws; and the adverse effect on local merchants when competitors located in adjacent municipalities without such bylaws attract customers across municipal boundaries.

## The Pros and Cons

Those who favour uniform store hours legislation argue that:

- If unchecked, there will be a general escalation in the length of store openings as more retailers extend their hours to meet competition.
- Cost and prices will rise because retailers will be forced to use more labour to service the same volume of trade.
- There will be pressure on employees to increase total hours worked.
- There will be a tendency to substitute part-time for full-time workers and more workers will be forced to work evenings.
- Cost increases may bankrupt some retailers.
- All this disruption will produce, at best, only a marginal gain in the way of increased convenience for shoppers.
- Municipal regulation is ineffective and, therefore, a province-wide approach is required.

Opponents of regulation are, for the most part, large suburban merchandisers. Their views:

- The trend to evening shopping is a response to the consumer's real needs. Its curtailment would cause great inconvenience to shoppers and penalize investors who have spent millions for facilities planned with evening operations in mind.
- Demands for regulation are an over-reaction on the part of downtown retailers to innovation and to the changing needs of consumers.
- Evening openings by suburban retailers will not escalate the opening hours of other retailers – nor cause severe dislocations – because the latter provide a unique service in their own distinct markets.
- Long opening hours are not necessarily associated with long working hours nor increased costs and prices.
- Introduction of provincial legislation is not only unnecessary interference with free enterprise but is against the trend towards transferring more local authority to municipal governments.

Unfortunately, no extensive documentation on store opening hours is available but some observations can be made for a few communities, including Metropolitan Toronto, which have been free from regulation for some time and in which a pattern of hours has emerged.

Despite the rapid expansion of late-night shopping in suburban plazas, there has been no marked trend towards longer hours among downtown retailers. As well, local neighbourhood merchants continue to operate on the basis of their traditional retailing hours.

Part of the apprehension of downtown retailers stems from a belief that total retail sales are approximately fixed and that the business flowing to suburban, mass-merchandising chains open at night must mean less business for downtown merchants. Those supporting

extended opening hours argue that, in fact, total retail sales are expandable and the sales going to these stores are not necessarily drawn away from other stores. It is argued that longer store hours – and Sunday opening – may be an inexpensive way of expanding available capacity to meet rising retail demand.

The issue here is whether the movement to late hours is accompanied by severe disruptions for established retailers. The only documentation which exists is a Charlottetown, P.E.I., study which demonstrates that established merchants were not adversely affected by the opening of a suburban discount store operating on a late night basis. However, this is simply one case. The truth is that very little is known about the extent of any disruption caused to established retailers.

It would appear that the adjustment to evening shopping is, in fact, already taking place.

Those who oppose curtailing late-hour openings claim that such restriction would cause inconvenience to many consumers. The importance of late-hour openings as a convenience is related to two trends: the increased participation of women in the labour force and the shift of population to suburban communities. The same decade which saw the development of suburban shopping plazas and the general expansion of suburban areas also saw an 84 per cent increase in the number of working women. Undoubtedly, the expansion of evening shopping is directly related to these factors.

Some operators of suburban shopping plazas have stated that they do more than 60 per cent of their business after 6 p.m., with the heaviest volume concentrated toward the end of the week. They also record a fairly substantial turnover on Monday and Tuesday. In their view, restricting evening shopping to two nights per week would reduce total sales and produce congestion in the two evenings and on Saturday.

The proponents of regulation argue that current shopping patterns are more a matter of habit than of convenience. They believe that the shopping public will easily adapt to a uniform schedule of hours involving only specific evening shopping days.

Again, the evidence is scanty. A survey of public attitudes in Quebec showed that seven out of 10 consumers were satisfied with two nights of shopping a week. A study by the Retail Merchants Association of Canada (Alberta), covering retailers in the Edmonton area, revealed that 94 per cent of retailers were in favour of restrictions on hours of opening. Both surveys were made in provinces where existing legislation restricts shopping hours.

Another argument is that, with extended opening hours, costs and prices will rise because retailers will be forced to use more labour in order to service the same volume of retail trade. The cost increases, it is argued, will cause some retailers to go bankrupt. But those who favour extended hours argue that long opening hours are not necessarily associated with either long working hours or with increased costs and prices.

In fact, each viewpoint is different. Supporters of store hours' regulation suggest that prices would rise if opening hours are extended. In other words, longer opening hours mean higher labour costs for the neighbourhood or downtown retailers because – since a substantial volume increase isn't expected – unit sales costs would rise. If all retailers extended their opening hours, then it follows that all their costs would rise without a compensating increase in sales.

This argument is based on the belief that, without regulation, there would be competitive escalation of store opening hours. But it isn't at all clear that this would be the case. If local neighbourhood or downtown retailers raise prices to cover the extra costs involved, this wouldn't help because their prices would be higher than those in stores more readily

adaptable to evening openings and they would also likely lose their sales volume. Significantly, many small and large retailers do not extend their hours when they have this option, suggesting that they consider it unprofitable to open every evening.

In short, without regulation, competitive pressures on local neighbourhood or downtown retailers aren't likely to mean a general escalation of their store hours or their prices. Some early closing stores might make the adjustment by raising prices, some by lowering them. Others may be forced out of business. The overall adjustment to extend evening shopping will be a shift in the structure of the industry, with an increasing share of total business going to suburban plazas.

On the other hand, evening openings five or six nights a week are said to result in lower unit sales costs and prices in shopping plazas. In fact, it's claimed that the long opening hours are essential to help defray the high fixed cost of operation and maximize the use of fixed assets.

In sum then, the trend towards extended opening hours may or may not lead to higher prices for local and downtown merchants but it apparently does mean lower costs and prices for a number of suburban plazas.

This suggests that it is misleading to think that extended store hours will result in a generally higher level of retail prices.

One aspect of the controversy surrounding uniform store hours is the suggestion that retail employees working in stores with frequent evening openings will be forced to work long hours. However, all statistics available indicate that individuals employed in retail trade do not, on an average, work longer hours than do those employed in other industries. Information available on working hours covers stores with varying opening hours. Representatives of stores with frequent evening openings have said that their employees do not work long hours. Extended hours are made possible by part-time staff.

However, if smaller stores were to extend their opening hours, it is possible that employees would be working longer hours because smaller establishments generally have less operating flexibility.

Undoubtedly, without restrictions on store opening hours, a greater portion of retail employees would be required to work evenings. It has been argued that a reorganization of work schedules away from the normal daytime pattern is opposed by retail employees and that regulation of store hours is required to prevent serious disruption to family life.

The Metropolitan Toronto Labour Council recently undertook a study which showed that store employees generally are dissatisfied with late working hours. In addition, the Ontario Federation of Labour and major unions engaged in the retail trade industry have clearly expressed their opposition to evening work.

However, even where stores are open five or six nights a week, it appears that full-time employees are not often required to work more than one or two evenings. Many union contracts also deal with the problem of split shifts.

Because of the difficulties of scheduling staff and employee preferences for certain combinations of work hours, the expansion of evening shopping has probably led to a greater use of part-time personnel. Some argue that regulation of hours would promote use of full-time employees, frequently family breadwinners, over part-time employees.

However, evening work in retail trade is a major source of employment for students and housewives who cannot work full-time. From this point of view, it is not evident that full-time rather than part-time employment should be favoured.

## The Available Options

There are four available options with respect to uniform store hours.

**OPTION ONE:** To continue the existing system by which the province empowers municipalities to regulate store hours by bylaw.

### Advantages:

- The legislation and current practices are familiar to the public.
- It is a flexible system, allowing for variation between municipalities.
- It is convenient to the consumer.
- It is comparatively easy to administer.
- It permits the retail industry to set its own hours locally with a minimum of regulation.

### Disadvantages:

- It results in some inter-municipal competition in retail closing hours.
- Some small, independent retailers may be forced out of business by chain stores and large retailers with the resources to staff for extended hours.

**OPTION TWO:** To introduce provincial uniform store hours legislation to closely regulate retail hours.

### Advantages:

- It would provide some protection to the small independent retailer.
- It would provide more regular hours for some retail employees.
- It would provide a maximum of 70 shopping hours a week for shoppers' convenience which is longer than the 40 hours a week that most people work.
- It would protect those retail employees who do not want to work in the evening or on holidays or Sundays.

### Disadvantages:

- It interferes with natural movements in the marketplace.
- It could reduce the number of part-time jobs available in the retail industry.
- It would be contrary to the interests of stores in suburban shopping plazas.
- It would be contrary to the general trend in Ontario toward the liberalization of closing laws.
- It would be less convenient for working mothers and other persons who must work during the day.
- There would be no local option to permit municipalities to exercise their preference.
- Such provisions might require an elaborate administrative and enforcement system.

**OPTION THREE:** To introduce provincial uniform store hours legislation in order to provide a broad regulatory framework which would permit most existing retail practices while avoiding unreasonable extensions of hours and irrational competition.



**Advantages:**

- It would permit retailers to set their hours within a broad framework and permit enough variation to meet local requirements.
- It would be easy to administer.
- It would encourage the use of part-time help, evenings and on Saturdays.
- The store hours permitted would be convenient to consumers.
- It would prevent flagrant abuses and irrational competition.
- It would provide some protection to small independent retailers without restricting the operations of shopping centres.
- It would ensure regular hours for most retail employees.

**Disadvantages:**

- The municipalities would no longer have the option of regulating retail hours.

**OPTION FOUR:** To withdraw existing provisions governing store hours and permit the market to regulate itself.

**Advantages:**

- Individual retailers would set their own hours.
- It would be convenient for the consumer.
- It would require no government regulation, administration or enforcement.
- It could produce more part-time jobs in the retail industry.

**Disadvantages:**

- Small independent retailers might be forced out of business by chain stores and large retailers.
- It could result in unrealistic competition in some areas.
- It could require employees to work irregular hours.

**OPTION FIVE:** To empower regional and metropolitan municipalities to determine retail hours within their boundaries.

**Advantages:**

- It raises a flexible system allowing variation of store hours among municipalities.
- It would avoid most inter-municipal competition concerning retail store hours.

**Disadvantages:**

- If the municipalities opt to allow the market to regulate itself, some small independent retailers may be forced out of business by chain stores and large retailers with resources and staff for larger retail hours.

## **Conclusion**

Proposals from the public concerning Sunday as a Common Day of Leisure and Uniform Store Hours are necessarily inter-related. Decisions reached with regard to one almost certainly affect the other.

It is hoped that public response will be directed to each question with this in mind. Ideally, proposals and recommendations from the public will reflect the inter-relation of factors that affect questions of store hours and Sunday.

Correspondence should be directed to:

**Honourable George A. Kerr, Q.C.  
Provincial Secretary for Justice  
Legislative Building, Queen's Park  
TORONTO, Ontario**



